

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID M. KURNIT,

Plaintiff/Cross-Appellee,

v

JANE M. WALTERS,

Defendant/Cross-Appellant.

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UNPUBLISHED

May 29, 2001

No. 214424

Washtenaw Circuit Court

LC No. 91-043739-DM

Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant cross appeals<sup>1</sup> as of right from an opinion and order denying her request for modification of child support. We affirm.

Defendant argues that the trial court erred in denying her request for an increase in child support when it failed to address current statutory requirements and considered extraneous factors.<sup>2</sup> We disagree. The decision to modify child support rests in the discretion of the trial court. *Burba v Burba (After Remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000). We review the decision for an abuse of discretion. *Id.* The trial court's factual findings are reviewed under the clearly erroneous standard, but the ultimate disposition is reviewed de novo. *Nellis v Nellis*, 211 Mich App 226, 229; 535 NW2d 240 (1995). We will reverse a trial court's decision only when convinced that a different result was required. *Id.* Review of the record reveals that plaintiff testified that the parties consented to an amount of child support that exceeded the recommended guidelines at the time of the judgment of divorce. Additionally, plaintiff agreed to pay additional sums for expenses that were not characterized as child support such as day care and college funding, but could have merely been included in the amount of child support.

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<sup>1</sup> Plaintiff voluntarily dismissed his claim of appeal.

<sup>2</sup> Plaintiff argues that this issue is not preserved for review when defendant failed to file a motion for modification of child support. Rather, the issue was raised by defendant in responsive pleadings to a petition filed by plaintiff. Plaintiff's allegation, that a formal independent motion was required, is without merit. Both parties were familiar with the issue of child support and argued the matter before the trial court. *Alpine Construction Co v Gilliland*, 50 Mich App 568, 572, n 2; 213 NW2d 824 (1973).

Defendant had the opportunity to rebut this testimony at the evidentiary hearing, but did not do so. Furthermore, plaintiff testified that he provided additional funding for items such as clothing and agreed to be responsible for the psychological counseling needed for the children. The trial court, in its opinion and supplemental opinion denying reconsideration, took into consideration all factors and complied with the requirements of MCL 552.17(2) and (3); MSA 25.97(2) and (3). *Kosch v Kosch*, 233 Mich App 346, 350-351; 592 NW2d 434 (1999). Based on this record, we cannot conclude that the trial court abused its discretion. *Burba, supra*. Defendant's contention, that the trial court was required to order the amount of child support as calculated by the guidelines, is without merit. *Sharp v Talsma*, 202 Mich App 262, 264; 507 NW2d 840 (1993).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Harold Hood

/s/ Richard Allen Griffin